

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EUGENE LAMAR HAMILTON,

Plaintiff,

vs.

L. SANCHEZ,

Defendant.

No. C 13-3410 PJH (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, an inmate at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff states that the sole defendant in this case disseminated to the inmate
18 population that plaintiff was a convicted date rapist and child molester in an attempt to
19 cause injury and prolong his imprisonment. Plaintiff states this was retaliatory, but provides
20 no other information nor is there any indication that he was harmed as a result. Plaintiff
21 then discusses several other unrelated incidents at other prisons and incidents that are
22 subject to other ongoing cases in this court. Plaintiff only seeks money damages.

23 Plaintiff states that defendant violated Title 15 of California Prison Regulations by
24 disseminating the information. However, this fails to state a federal claim as plaintiff must
25 allege the violation of a right secured by the Constitution or laws of the United States. The
26 existence of regulations governing the conduct of prison employees does not necessarily
27 entitle an inmate to sue civilly for their violation. *Davis v. Powell*, 901 F. Supp 2d 1196,
28 1211 (S. D. Cal. Oct. 4, 2012). Nor has plaintiff alleged any violation of the First or Eighth

1 Amendment. The complaint will be dismissed with leave to amend to provide more
2 information for his claims.

3 **CONCLUSION**

4 1. The complaint is **DISMISSED** with leave to amend in accordance with the
5 standards set forth above. The amended complaint must be filed no later than **September**
6 **13, 2013**, and must include the caption and civil case number used in this order and the
7 words AMENDED COMPLAINT on the first page. Because an amended complaint
8 completely replaces the original complaint, plaintiff must include in it all the claims he
9 wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may
10 not incorporate material from the original complaint by reference. Failure to amend within
11 the designated time will result in the dismissal of these claims.

12 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
13 court informed of any change of address by filing a separate paper with the clerk headed
14 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
15 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
16 Federal Rule of Civil Procedure 41(b).

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18 **IT IS SO ORDERED.**

19 Dated: August 7, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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